



OFFICE OF THE
INFORMATION and PRIVACY COMMISSIONER
for Prince Edward Island

Decision No.	D-26-003
OIPC File No.	C/24/00250
Public Body	Department of Housing, Land and Communities
Public Body Ref. No.	2024-263
Statute	<i>Freedom of Information and Protection of Privacy Act</i>
Decision-Maker	Maria C. MacDonald, Deputy Commissioner
Date of Decision	February 18, 2026

SUMMARY

The Deputy Commissioner found that the Department of Housing, Land and Communities (the “Department”) properly applied section 22 of the *Freedom of Information and Protection of Privacy Act* (the “FOIPP Act”).

BACKGROUND

- [1] The Applicant had complained about the state and lack of upkeep of a privately-owned property near their home. In 2024, the Applicant asked for records related to remediation, inspections, and orders issued related to this property, over a one-year period between June 14, 2023, and June 14, 2024.
- [2] The Department responded and provided 216 pages to the Applicant. They withheld portions of six pages (and duplicates) under sections 22(1)(a) [consultations or deliberations] and 22(1)(g) [advice to officials] of the *FOIPP Act*.
- [3] I wrote to the Applicant and described the process for reviewing whether a public body properly applied section 22 of the *FOIPP Act*. The first question is whether the above noted clauses apply. I told the Applicant that I reviewed the withheld information, and I confirmed that the withheld information is either a consultation or deliberation [section

22(1)(a)], or advice from officials [section 22(1)(g)].

- [4] Subsection 22(2) lists several circumstances when section 22 does not apply. The second question is whether any provision of subsection 22(2) applies. In the same letter to the Applicant, I confirmed that none of the circumstances listed at section 22(2) of the *FOIPP Act* apply.
- [5] The only remaining question is whether the Department properly exercised their discretion when they decided to withhold information. When asked, the Applicant confirmed that they wanted me to review whether the Department exercised their discretion properly. I asked for and received the Department's submissions and gave them to the Applicant for their response.
- [6] The Applicant did not respond to the Department's submissions. I considered the Applicant's request for review, the Department's submissions, and the responsive records.

ISSUE

- [7] The issue is whether the Department properly applied section 22. The only remaining question to consider is whether the Department exercised their discretion reasonably when they decided to withhold information from the Applicant.

ANALYSIS

- [8] A public body has discretion to decide whether to give or withhold information that satisfies section 22 of the *FOIPP Act*. A public body must exercise their discretion reasonably. A public body must show that all relevant factors for and against access were considered in a balanced and judicious manner. Examples of potentially relevant factors are listed in previous decisions, and in the province's *FOIPP Act Guidelines and Practices Manual* (January 2025), at page 74.
- [9] The Department states in part that:

. . .When exercising their discretion, the Public Body Head acted in good faith and took all relevant facts and circumstances into consideration, including the following:

- The general objects and purposes of the Act, including an individual's right to access records subject to the limited exceptions in the Act,
- Past orders of your office,
- The nature of the records and their sensitivity,
- The principle of severance which enables a public body to provide the

Applicant with as much information as possible while also protecting sensitive advice,

- The Applicant's expressed personal interest in the subject matter of the records and their desire to obtain access to the records when balanced against the Public Body's need to ensure and receive fulsome and candid advice from officers or employees,
- The fact that the Applicant inquired with the Public Body and numerous employees on numerous occasions about the subject matter of the Request, and the fact that the Public Body responded to their inquiries on two occasions (November 2, 2023, and January 17, 2024),
- The fact that the situation surrounding the subject matter was contentious, involving parties with different views, interests and responsibilities, thereby being a situation where the Public Body considered the need for the Public Body to be able to deliberate and exchange advice freely without fear of outside scrutiny,
- The principles related to substantive changes upon which we elaborate later in these submissions,
- The historical practice of the Public Body with respect to the desire to protect the integrity of advice of officers or employees and the related decision-making process when there are different interests and circumstances are challenging.

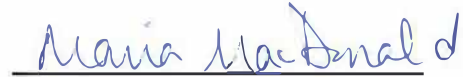
[10] The Department also stated that they did not believe that disclosure would increase public confidence.

[11] The Department mentioned the principles related to substantive changes. They are referring to previous decisions of our office which say when withheld information is part of a draft document, a relevant consideration is if the final version is publicly available. It weighs in favour of disclosure if disclosing the withheld information reveals minor variations in grammar or punctuation. It weighs against disclosure if disclosing the withheld information reveals substantive changes between the draft and the final version. Although the final versions of the documents were not published, they were given to the Applicant. The Department disclosed some information that they had previously withheld from draft documents that would not reveal substantive changes.

[12] In consideration of the withheld information, and the Department's submissions, I find that the Department exercised their discretion reasonably. The Department considered relevant factors and did not take any irrelevant factors into account. There is no evidence that the Department withheld information in bad faith or for an improper purpose.

CONCLUSION

[13] I find that the Department properly exercised their discretion. I confirm the decisions of the Department to withhold information under section 22 of the *FOIPP Act*.



Maria C. MacDonald
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Deputy Commissioner